

## **REMARKS**

Applicants respectfully request that the Office consider the claims as amended in the above claim amendments. Entry of the amendments is respectfully requested.

### **1. Status of the Claims**

Claims 20-50 stand pending and subject to restriction / election.

Upon entry of the present amendments, Applicants (1) amend claims 29-30 and 32 to more precisely recite the claimed subject matter, and (2) introduce new claims 51-52. Support for the amendments can be found at least from original claim 29 and the first full paragraph on page 14 of the Specification. Applicants do not believe that the amendments add prohibited subject matter that is unsupported by the Specification.

The claims have been amended without prejudice to, or disclaimer of, the canceled subject matter. Applicants reserve the right to file a continuation or divisional application on any subject matter canceled by way of amendments.

### **2. Restriction Requirement**

The Office restricted the claims into one of the following groups:

- 1) **Group I:** claims 20-27 and 34-45, drawn to a composition comprising polymerized and non-polymerized catechins, wherein the content of the polymerized catechins is higher than that of the non-polymerized catechins;
- 2) **Group II:** claims 28-33, drawn to a method for producing a composition in which the ratio of the polymerized catechins to the non-polymerized catechins is made higher than in the original aqueous liquid, which comprises the steps of contacting the aqueous liquid with an adsorbent while the liquid is held to a temperature of at least 50 °C, whereby the non-polymerized catechins is selectively removed; and
- 3) **Group III:** claims 46-50, drawn to a method comprising administering a compound which contains polymerized catechins and non-polymerized catechins, wherein the content of the polymerized catechins is higher than that of the non-polymerized catechins.

Office Action, page 4. The Office alleges that the technical feature among the above groups is “a composition comprising polymerized and non-polymerized catechins, wherein the content of the polymerized catechins is higher than that of the non-polymerized catechins.” *Id.* The Office

alleges that Ikeura et al., THE JAPANESE SOCIETY OF NUTRITION AND FOOD SCIENCE SOKAI KOEN YOSHISHU, April 1, 2003, p. 243 ("Ikeura") destroys unity of invention. *Id.*, at 4-5. Ikeura allegedly teaches "a composition comprising a higher proportion of polymerized polyphenol relative to non-polymerized polyphenol." *Id.*, at 5. The Office further acknowledges that the present restriction requirement is between product and process claims—if the product claims are elected and allowed, the corresponding process claims can be rejoined. *Id.*, at 6.

### 3. Election

Applicants elect Group II without traverse. New claim 51 depends from any one of claims 28-29 and 32-33, and new claim 52 depends from amended claim 30. Accordingly, Group II contains claims 28-33 and 51-52.

The Office mischaracterizes Ikeura. Ikeura allegedly teaches that "cocoa, green tea, and oolong tea were subjected to an ethanol extraction procedure followed by ODS chromatography and gel filtration." *Id.*, at 5. As is described in the relevant Method section of Ikeura, however, only cocoa was subjected to an ethanol extraction procedure followed by ODS chromatography and gel filtration. *See* English translation of Ikeura submitted with the Information Disclosure Statement of May 6, 2008, page 1 ("We have found that an 80% *EtOH* extract of cocoa..."; and "An 80% *EtOH* extract of cocoa was dried and dissolved...") (emphasis added). Therefore, Ikeura does not teach extracting green tea and oolong tea with ethanol. Green tea and oolong tea were used only to compare lipase inhibitory activity with cocoa at a concentration suitable for drinking. *See id.*, page 2 ("When cocoa, green tea and oolong tea were compared for..."). Accordingly, the results such as "the lower polarity obtained polyphenol fraction had a 3-fold stronger lipase inhibitory activity and was associated with a higher molecular weight" only refer to cocoa extract, but not green tea or oolong tea. Applicants respectfully request that, during examination on the merits, the Office reconsider Ikeura's teachings in view of the above statements.

**CONCLUSION**

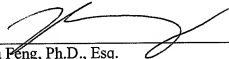
The application is in condition for examination on the merits, which is respectfully requested. Should the Office have any questions or comments regarding Applicant's response, the Office is requested to contact Applicant's undersigned representative at (202) 842-8821. Furthermore, please direct all correspondence to the below-listed address.

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 50-0573 for any such fees; and Applicant hereby petitions for any needed extension of time.

Respectfully Submitted,

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By: \_\_\_\_\_

  
Zhengyu Peng, Ph.D., Esq.  
Registration No. 66,816

DRINKER BIDDLE & REATH LLP  
Customer No. 55694  
1500 K Street, N.W., Suite 1100  
Washington, D.C. 20005-1209  
Tel. No.: (202) 842-8800  
Fax No.: (202) 842-8465